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May 19, 2000

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Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW A325
Washington, D.C. 20554

Re: C.C. Docket No. 99-200
Further Notice of Proposed Rulemaking

Dear Ms. Salas:

Enclosed please find an original and four copies of the Initial Comments of the New Hampshire Public Utilities Commission in the above matter. A diskette is being provided by mail today to Jeannie Grimes, Network Services Division, Common Carrier Bureau, and a hard copy is being mailed to International Transcription Services, Inc.

Sincerely,

E. Barclay Jackson
(ed)
E. Barclay Jackson, Esq.
Staff Attorney

Enclosure

cc: Jeannie Grimes
Network Services Division
Common Carrier Bureau

International Transcription Services, Inc.

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MAY 22 2000

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Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF]
NUMBERING RESOURCE OPTIMIZATION]

C.C. DOCKET No. 99-200

**COMMENTS OF THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

The New Hampshire Public Utilities Commission (NHPUC) submits these Comments in response to the Further Notice of Proposed Rulemaking (FNPRM) issued by the Federal Communications Commission (FCC or Commission) in this docket on March 31, 2000.

In the FNPRM, the FCC seeks comment on four issues: (1) what national utilization threshold the Commission should adopt for carriers seeking additional numbering resources (§ 248); (2) whether covered commercial mobile radio service (CMRS) carriers should be required to participate in pooling immediately upon their implementation of local number portability (LNP) no later than November 24, 2002 (§ 249); (3) how a market-based number allocation system could be implemented (§ 251); and (4) what costs and what quantity of those costs appropriately should be included in a recovery mechanism for number pooling costs (§ 253).

Below, the NHPUC urges the Commission to (a) adopt a utilization rate of 70 to 80%; (b) require wireless carriers to implement pooling as soon as they have deployed LNP technology; (c) immediately institute a national NPA for non-location-specific uses, such as UMS services, and permit states to do the same within local NPAs; (d) do a cost-benefit analysis before adopting a pricing scheme, and in the meanwhile, vigorously enforce conservation measures including delegation of further authority to the states; and (e) ensure that LNP costs are not recovered twice.

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I. THE FCC SHOULD ADOPT A 70 TO 80 PERCENT UTILIZATION RANGE

A. The Proposed 50% - 80% Fill Rate is Inadequate.

In New Hampshire's view, a 50% utilization threshold is inadequate. Carriers would use just half of the numbers they already possess before seeking more numbers. This, in turn, will lead to continued inefficient and wasteful number usage.

The Commission states that, in comments filed in response to last summer's NPRM, parties proposed utilization thresholds "as low as 60% and as high as 90%" (§ 248). Nonetheless, the FCC tentatively concludes that a "nationwide utilization threshold for growth numbering resources should be initially set at 50%", and would "increase by 10% annually until it reaches 80%". (*Id.*) The FCC's tentative conclusion is puzzling because the range – 50 to 80 percent – is lower at both ends than the range parties recommended in their comments.

According to the Commission, the NANP has estimated that the high end of fill rates as of 1999 was below 55%. See, Notice of Proposed Rulemaking, CC Docket No. 99-200, released June 2, 1999, §21. Therefore, the industry has already demonstrated that it can achieve a 50% fill rate, and the use of 50% as a threshold will not spur the industry to achieve its utilization potential. The objective should not be to set the rate at a level that encourages the laggards to achieve the inefficient (albeit higher) fill rates of their colleagues in the industry. Rather, it should be to move the efficiency of number usage to its optimal level.

New Hampshire's 603 area code is currently in jeopardy, subject to a lottery system of number assignment. The FCC delegated additional authority to the NHPUC to implement a Thousands Number Block Pooling (TNP) Trial. As part of the TNP Trial, which commenced May 1, 2000, carriers are required to reach a 75% fill-rate before requesting additional blocks.

The NHPUC anticipates that its TNP will greatly reduce the waste of numbering resources. These numbering resource conservation efforts may result in the avoidance of the unnecessary expense and aggravation to New Hampshire consumers that results from adding a new area code.

The New Hampshire public has demanded real controls on carrier access to public numbering resources. For example, the New Hampshire legislature has enacted a law stating that it is in the public interest for the NHPUC to aggressively conserve telephone numbers. 1999 NH Laws, Chapter 126:1, III. In the experience of the NHPUC, setting the fill-rate at 50% will insure an ineffective pooling program and also reduce public confidence that regulators are acting in their best interest.

B. The Fill-Rate Should Be Implemented Immediately

New Hampshire opposes the FCC's proposed ramp-up of the fill-rate from 50 to 80 percent over a four-year period. Such an approach would create a powerful incentive for carriers to try to obtain as many numbers as possible during the ramp-up period, regardless of actual need. Carriers would feel compelled to seek extra numbers because they would know that the utilization threshold would rise over time, thus diminishing their ability to obtain additional numbers in the future.

New Hampshire has first hand experience of this behavior by carriers. At the industry meeting held January 9, 1999, after the NANPA declared an "extraordinary jeopardy" situation for 603, in anticipation of TNP, carriers agreed that beginning in March 1999, they would utilize already contaminated number blocks prior to contaminating additional number blocks. Between January and March, at least one carrier proceeded to contaminate all blocks in more than 20 NXXs, effectively eliminating 200,000 numbers from the TNP trial. While this action was

technically within the carrier's authority, the NHPUC suspects that the action was motivated not by a need for 200,000 numbers, but by a desire for competitive advantage. The behavior, while regrettable, is understandable, and in our view will be repeated under the FCC's proposed plan.

The object of setting a utilization threshold is to conserve numbers for future use, whereas the ramp-up the FCC proposes will have exactly the opposite effect. Carriers will grab numbers up front, leaving fewer resources, including fewer area codes, for later use. New Hampshire recommends that whatever the fill rate or fill rate algorithm chosen, it should be applied in a flash-cut manner, to avoid the incentive to hoard numbers.

C. A Range Would Allow States Flexibility to Respond to Varying Levels of Demand

New Hampshire believes that the FCC should accord state commissions some discretion in establishing utilization thresholds. States may choose to establish lower utilization thresholds in areas where demand is lower. Or a state commission may determine that a higher utilization threshold is more appropriate in areas outside the top 100 Metropolitan Statistical Areas (MSAs) where states cannot order implementation of number pooling for absence of LNP capability. This measure of discretion will not impinge significantly on carrier business or marketing plans, but will allow state commissions some ability to respond to local conditions. A fixed national utilization threshold will not allow such flexibility, and is unnecessarily rigid.

D. Until NANPA Can Shorten the Time Needed to Put New Numbers in LERG, an 80% Fill Rate Is Reasonable

The 80% utilization ceiling the FCC proposes as the ultimate rate appears reasonable, for the time being. A ceiling as high as 90%, as some parties recommended in earlier comments, may allow insufficient time between reaching the threshold and the 66 days now required to enter a new NXX code in the Local Exchange Routing Guide. Carriers could deplete their

supply of numbers in that 66 day period because the extremely high utilization threshold would simply cut too close to exhaust. NANPA should be directed to explore ways to shorten the over two month period for entering a new NXX Code in the LERG, and if this is done, a higher fill rate could be required in the future.

E. Alternatively, the Commission Should Adopt a Nationwide Utilization Threshold of 75 Percent

The NHPUC recognizes the FCC's interest in national uniformity of numbering mechanisms generally. If the FCC is convinced that a mandatory national utilization threshold is necessary at this time, the NHPUC recommends that the threshold be set at 75%. In addition to New Hampshire, four other state commissions have adopted a 75% utilization threshold: California (in the 310 NPA), Maine, Massachusetts, and New York. Maine has enforced its 75% utilization threshold since November, 1999. Carriers have not protested the threshold in New Hampshire or in those other states. In addition, Connecticut is presently considering the same threshold.

F. The FCC Should Allow an Imminent Exhaust Exception to the Utilization Threshold

New Hampshire also supports allowing one exception to the utilization threshold, whether it be a 70% to 80% utilization range, or a uniform 75% utilization threshold. If a carrier can document that the carrier's current supply of numbers will exhaust within six months, the carrier should be able to obtain additional numbers in order to avoid exhausting its supply prematurely. The documentation must demonstrate that future demand in the coming 6-month period will exceed supplies of numbers on hand, and the standard of proof should be high.

II. THE FCC SHOULD REQUIRE WIRELESS CARRIERS TO IMPLEMENT POOLING AS SOON AS THEY HAVE DEPLOYED LNP TECHNOLOGY

The FCC asks whether “covered CMRS carriers should be required to participate in pooling immediately upon expiration of the LNP forbearance period on November, 24, 2002”. The NHPUC’s answer is an unqualified “no”.

In early 1999, covered CMRS providers received from the FCC an extension of time to deploy LNP technology. That extension of time expires in November, 2002. By then, covered CMRS providers will have had almost four years to deploy LNP technology and to prepare for number pooling. From all indications, that four-year period should be adequate.

The California PUC’s inquiries to wireless carriers uncovered no technical obstacles that will remain by November 24, 2002; industry meetings in New Hampshire, attended by wireless carriers, produced no claims of wireless carriers’ inability to meet the deadline. In fact, no State commission participant in the State Coordinating Group on numbering issues has reported that wireless carriers raised any technical consideration that would justify a delay in implementing number pooling. Despite state experience however, the NHPUC understands that the wireless industry has asserted to FCC staff that technical impediments exist which will prevent meeting the November, 2002 deadline. Such claims are not supported at the state level and, as in similar situations, the FCC should stand by its enunciated deadline.

The Commission in the past has recognized the necessity to require a high threshold of proof of technical impossibility before granting such extraordinary treatment. For instance, in DA 99-781, the Network Services Division refused to accept the LECs’ allegation of technical inability to implement dialing parity after a three-year preparation time. To continue to accede to the CMRS providers’ complaints, without requiring a convincing showing of technical impossibility, effectively provides an anti-competitive advantage to such carriers. Such

technology-specific preference is precisely the kind of discrimination this Commission has stated it wishes to prevent, but only in the context of supposed discrimination *against* such carriers, not, as here, where the Commission fosters discrimination *in favor* of such carriers.

Covered CMRS providers have known of the FCC's November 24, 2002 deadline for implementation of LNP for over a year. One of the primary applications of LNP technology is for number pooling. Given the high level of area code activity across the nation for the past two years, as well as the industry meetings on the subject in New Hampshire, attended by CMRS providers, covered CMRS providers have been on notice that deployment of LNP technology would be coupled with the need to implement pooling. New Hampshire urges the FCC not to allow additional time, especially given that carriers still have, as of May 1, 2000, two years and seven months until that deadline comes to pass.

Allowing even one month's delay in requiring covered CMRS providers to engage in number pooling will have a significant impact in New Hampshire. In New Hampshire, wireless carriers hold 115 NXX codes, or 1,150,000 numbers in the 603 NPA. The total population in NH in 1999 was approximately 1,200,000. Because wireless carriers have been reluctant to supply the NHPUC with utilization data, we suspect a significant amount of these numbers are unused. Thus, some unknown number of thousands-blocks could be available for pooling today in New Hampshire if covered CMRS providers were technically capable of pooling. Each day of delay is a day that covered CMRS providers must continue to draw numbers in blocks of 10,000 regardless of their need or their usage.

III. THE FCC SHOULD IMMEDIATELY INSTITUTE A NATIONAL SAC FOR NATIONAL LONG-DISTANCE SERVICES, AND PERMIT STATES TO ESTABLISH 'ODDBALL' NXXs WITHIN NPAs.

A. UMSs and similar services are rapidly exhausting location-specific NPAs

In its ongoing efforts to pursue number conservation, under the directive of the New Hampshire legislature, the NHPUC has continued to explore reasons for the potential exhaust of the 603 NPA. In the course of this exploration, the NHPUC has identified a problem that it shares with a number of other states, and which would greatly benefit from a “national solution” which only the FCC can provide. As explained below, the FCC should immediately institute a national NPA (or SSAC) that carriers can use to provide “national long distance” service to their customers, in such a way that the billing is automated and is not locationally-determined.

In reviewing forecast information as part of its May 1, 2000 implementation of thousands-block pooling, the NHPUC discovered that one carrier had asked for 400 new thousands-blocks, or 10 blocks in 40 rate centers (the equivalent of 40 complete NXX codes), mostly for “growth” and mostly in rural areas, in addition to the 45 NXX codes already assigned to this carrier. It was difficult to believe a CLEC could need more than 10,000 numbers in an exchange with a population of approximately 1000 residents. Upon further analysis, we discovered some CLECs certified in New Hampshire were assigning a significant amount of numbers they had obtained in the 603 NPA to a firm called “eFax” to serve customers who were not located in New Hampshire.

The eFax webpage explains that its customer can have a phone number assigned to it, free of charge, for the purpose of receiving a fax via e-mail anywhere in the world reachable by e-mail. The customer may be a resident of any state or country. A person desiring to fax the customer dials the customer’s “fax number,” the faxed message arrives at the carrier, the carrier

hands the message off to eFax, eFax converts the fax to email and e-mails it to the customer.

Thus, a fax sent from Texas to a 603 “fax number,” shunted to a retrieval facility in another state for e-mailing to a customer in California or Guam, may have significant costs to New Hampshire citizens in terms of NPA exhaust, but produces negligible benefit to them.

The practice is devouring critical New Hampshire numbering resources to benefit non-New Hampshire consumers, as demonstrated by the inordinately large number of blocks requested by the carrier. Continuation of the practice will rapidly exhaust the 603 area code. The NHPUC understands that this type of numbering usage is occurring in a number of other states, with eventual exhaust implications for the affected NPAs.

B. Non-Location-Specific NPAs and NXXs are needed for these services

The NHPUC asks the Commission to consider a national NPA, or a service-specific area code, for carriers who serve unified message service providers and others for whom numbering requirements are not geographically relevant, but neither 800 or 900 numbers are suitable substitutes. During testimony at hearings begun at the NHPUC to investigate this type of number usage and the rights to such numbers,¹ we discovered that only 75,000 (under 4 %) of eFax’s 2,000,000 assigned phone numbers nationwide were geographically relevant to the NPAs from which the numbers were taken. The remaining 1,925,000 numbers, in the eFax example, could be assigned from a national, or service-specific, area code.

If the Commission were to institute a national long-distance NPA, the state-specific numbers would of necessity come out of the NPAs identified by the customers, because

¹ The hearings commenced May 16, 2000 on this issue at the request of Global NAPs, in NH PUC Docket No. DT 00-001, have been suspended by agreement with the carrier, pending settlement discussions. In the meanwhile, the carrier has drastically lowered its original forecast of number requirements, and agreed to a temporary rationing of those future number requirements it still forecasts. The Commission has not yet finally determined whether its initial determination, that eFax-type uses of the 603 NPA by certified carriers is in the public interest as required by state law and that such service is not a local exchange service, Order No. 23,454, May 1, 2000, is correct. The matter is pending.

customers of eFax services specifically requested a locationally-identified fax number. Similar provision would have to be made for customers of other such services who also desired a location-specific area code. It might be possible to charge such customers a premium for such numbers, as is done with vanity plates, but the NHPUC does not propose this at the present, because the customer may have ties to the location of the NPA that should be given the same benefit as that enjoyed by wireline LEC customers, who presently get location-specific NXXs (and NPAs in locations where the inefficient numbering system has not produced exhaust and overlay) by default.

While eFax is just one particular entity providing this service using 603 numbers supplied by Global NAPs, this is representative of the type of national service that is having grossly disproportionate effects on particular states. Establishment of a locationally-non-specific national area code would enable such firms to continue to offer services in a manner that permits the customer sending the fax to be certain of a knowable and moderate long-distance charge for accessing the service (and permits the carriers to bill the transport cost-effectively, since no content is included in the charge), without distorting the market for number resources in any given state, particularly those that have indicated a desire to maintain locational identities for the NPAs in their states. Meanwhile, such providers would compete with each other for numbering resources within the national NPA, and to the extent such competition fostered efficient use of numbers, it would do so within that NPA, rather than promoting the cannibalization of NPAs that have no relation to the UMS providers.

A related proposal is to allow states to set aside “oddball NXXs” within NPAs for similar in-state services that do not need or desire a locational identification, such as most wireless services. This would help keep pressure off of NXXs that are near exhaust, and in turn

reduce the pressure for additional NXX release. It poses no competitive disadvantage to wireless carriers, since it would require no technical upgrades, and does not conflict with typical wireless service pricing plans.

States should also be free to identify areas in the state where mandatory release of numbers will jeopardize the ability of localities to maintain NXX identification (e.g. areas where NXXs are nearing fill), and remove them from the mandatory single statewide market.

C. The FCC can solve the UMS problem without deciding the ultimate fate of the NANP: Location-specific or Customer-Specific

The struggle over area codes and NXX assignments puts in relief the tension between services that have no locational identification with the number used for access, and customers' use of numbers to provide locational identification for those who want to contact the customer. The Commission need not choose between these two models today, forcing one group of users to give up the benefit it sees in a particular numbering plan for the benefit of the other group. The Commission can establish parallel numbering options, some that are location-specific, and others that are not, for the UMS-type services, as has been done for 900 and 800 numbers. In this fashion, the non-location-specific uses will not need to draw on scarce location-specific resources to provide their services.

Such an outcome will not only extend the life of a given NPA, it is likely to extend the life of the NANP, even though number assignments shifted from the locational-specific NPAs to the national NPAs will continue to be used. This is because the utilization rate will likely be higher if non-location-specific uses are migrated to their own code, permitting location-specific carriers and their customers to make full use of the location-specific NPAs.

IV. PRICING NUMBERS WILL NOT AVOID THE NEED FOR INTENSIVE FCC MANAGEMENT OF THE NUMBERING SYSTEM

A. Pricing Can Be Made To Work, But Is No Panacea

The Commission has asked on a number of occasions for comments on whether a pricing regime for numbers could effectively manage the demand for such resources, and enable regulators to shed the role of micromanaging this resource. The New Hampshire Public Utilities Commission (NHPUC) is committed to market-based solutions where-ever they are appropriate, and agrees that pricing can often serve to rationally determine the distribution of resources. The NHPUC also agrees with the Commission that the current numbering system encourages wasteful use of numbers and anti-competitive use of numbers, and discourages new entrants who may bring with them innovations in technologies and services of great value to the public. Further, the New Hampshire Commission understands all too well the limits and frustrations of regulating the minutiae of transactions between entities, whether they be carrier-customer dealings, or carrier-to-carrier disputes. If pricing could alleviate the need for the Commission to continue with ever-more specific directives to NANPA, codification of a greater and greater portion of the utilization guidelines into regulation, dispute-resolution over specific code-utilitization conflicts and the like, while simultaneously achieving fairness and efficiency in number allocations, the NHPUC would wholeheartedly support the Commission's expressed desire to move to a pricing regime.

Unfortunately, to construct a pricing regime that produces an efficient and fair distribution of numbering resources, and one that encourages entrants with innovations for consumers, is bound to require a level of FCC market oversight that is the functional equivalent of direct management of the resource.² That is, there is no practical way to avoid the necessity

² This oversight could be delegated to the states, but it cannot be avoided.

(a) to make detailed decision rules that will govern the allocation of the scarce numbering resource, (b) to enforce those decisions by intervening from time to time to police the market, and (c) to monitor the market closely and modify the decision rules should the need arise. These regulatory duties, which would continue to draw the Commission into the details of numbering allocation issues, arise from (a) the nature of the good that is the subject of the proposed pricing regime, (b) the need to ensure that the outcome of the pricing decisions and carrier behaviors in response to those prices produces a fair and equitable result, and (c) the limitations of pure supply-and-demand schemes to produce those results, given the limited supply of numbers.

Sadly, pricing regimes are not a silver bullet. Indeed, if pricing can be used to produce the desired outcome of efficiency and fairness of number allocation, it is only through a complicated pricing structure that is essentially imposed by the regulator, and which requires as much regulatory oversight as the present command-and-control approach.

B. Pricing May Have Perverse Anti-Competition, Anti-Efficiency Effects

It is not clear that, given the limited supply of numbers, the Commission's premise for moving to pricing is accurate: if carriers (and others) have to pay for numbers, they will ask only for those numbers that are needed for their customers' legitimate use.³ It is true that if, as today, numbers remain essentially free for the asking, there is no incentive to conserve the use of numbers, and every incentive to ask for as many numbers as possible.⁴ But that does not make

³ For the purposes of the discussion which follows, it is assumed that the form of pricing is payment for the "ownership" of a number, meaning payment for the right to use the number, or not use the number, in the PSTN. The payment could be characterized as a lease payment, or a license fee, or otherwise than a payment for title to the number. Thus, for simplicity's sake, the argument will be cast in terms of ownership rights. But see the comments of the California PUC dated July 31, 1999 in this docket regarding customer right to numbers. Query whether a customers' number can be transferred to a different carrier (or to others permitted to 'buy' numbers) without transferring the customer to a different carrier, or transferring the number to a different customer or taking it out of circulation, with the concomitant transfer of the customer to a different number?

⁴ Indeed, as New Hampshire and others have pointed out in previous comments in related dockets, there is today the perverse incentive to accelerate the acquisition of numbers, because the Commission's threat of a future pricing system means that (a) the cost of number acquisition in the future is likely to go up, (b) if other transitions to a market-based system are a guide, existing caches of numbers are likely to be grandfathered to some extent, and (c) a

the reverse accurate (“if they have to pay for numbers, then carriers will only take the numbers they need to provide valuable service to customers”). And even if it were, it does not produce the desired end result of a fair allocation, nor the desired end result of efficiency, unless the prices are administratively determined in a fashion designed to call forth “number-purchase” behavior that is aligned with the goals of fairness and efficiency.

A number-pricing system will produce an incentive to try to corner the market on numbers by buying up numbers (as opposed to the present technique of seeking to hoard numbers through NANPA under the present weak Code Assignment Guidelines). This is so because there is no possibility of an increase in the production of numbers such as would permit a competitor to underprice the entity that has cornered the market. There is a finite number of numbers in any given numbering configuration, and entrepreneurs cannot open “number factories” to produce more numbers at a lower cost than the price demanded by those firms that have control of the bulk of the numbers. Cartels can work when markets are not contestable.

Because it is possible to corner a market such as this, savvy carriers⁵ with enough money will buy up the supply of numbers, perhaps paying higher and higher prices in the short term, until they control sufficient numbers (either nationally or in number-constrained pockets) to control access to the PSTN. As a result, unless the Commission restricted the right to purchase numbers on some grounds other than whether the buyer has the money to pay the going rate, competing carriers and would-be carriers would essentially have to go to these number-controlling entities to get numbers, and these entities could set whatever price they want and sell to whomever they wanted.

cache of numbers may become a valuable commodity that can be sold to others if not needed by the carrier.

⁵ (and others, if the Commission permits a secondary market in numbers to develop)

One could argue that anti-trust law will prevent such abuses of the proposed market in this scarce and non-expandable good. Whether or not this is true, it is also true that antitrust (a) is a clumsy, time-consuming, expensive and sometimes heavy-handed tool to resolve complicated and industry-specific problems, and (b) to be effective in achieving specific allocative fairness and efficiency outcomes, antitrust regulation requires the same level of “micromanagement” that the Commission is seeking to avoid in the first place. Developing a solution that is dependent on antitrust enforcement to work is at best shifting the micromanagement duties to the Attorneys General and the courts.

If the Commission were to set prices administratively (as by establishing an annual or other periodic license fee, based on the number of numbers an entity had), the need to make fine administrative distinctions and engage in close estimation of costs (including externalities, which are almost by definition difficult to quantify) would persist explicitly.

The cost to administer an effective pricing system are not insignificant. The NHPUC agrees with the California PUC, as it stated in its July 31, 1999 comments in this docket, that the FCC should undertake a cost-benefit analysis of the concept of implementing a number pricing system. A cost-benefit analysis of imposing a pricing scheme would include number distribution costs, utilization monitoring costs, enforcement costs, and costs associated with collecting license fees and administering their eventual application.

C. Transition Issues Are Crucial

To institute a pricing regime, the Commission will have to set a transition policy. As the Commission noted in its May 1999 NPRM, it will be necessary to determine, among other things: (a) whether incumbent carriers may retain all numbers presently assigned to them, and if so, will they be required to pay for them, how much will they pay, to whom will they pay it, and

what will be done with the proceeds, (b) when pricing will begin, and (c) how access to numbers would be controlled in the interim, including how to prevent the hoarding that announcement of possible future pricing will inspire? In other industries, such as the electric power and transmission industry, questions like these have created enormous disputes between incumbents and prospective market entrants, which have dragged on before legislatures, commissions and courts, delaying the introduction of the market-based solution and resulting in large commitments of funds to incumbents to compromise their claims to the full value of the resource in question.

Because of the tendency to hoard numbers, reinforced by the fact that numbers are free now and would not be free under an announced future pricing regime, the Commission should either announce it is abandoning the concept of pricing, or in the more likely event it desires to continue to pursue the concept, it should immediately begin intensive augmentation and enforcement of the pro-competition, pro-fairness and pro-efficiency aspects of the current allocation system.

D. Specific Pricing Questions that Require Resolution

The eventual institution of the pricing regime itself requires answers to yet more questions, some of which the Commission listed in its May 1999 NPRM: (a) who will be permitted to buy and hold numbers (e.g. only state-certified carriers, carriers otherwise meeting Commission criteria, any carrier whether using the numbers or not, any entity whether carrier or not, etc.) and who will determine if the criteria are met in any given case, (b) in a related question, will there be secondary markets allowed in numbers, including forward contracts, hedging, tradable stock in numbers, and other financial tools, (c) will it be permissible to mortgage one's numbers, and if so, what are the mortgagee's rights and obligations regarding

use of the numbers upon the buyer's default, (d) if non-carriers may own numbers, and if carriers may own numbers they are not using, is there any way to get numbers from the number-holding entities aside from paying money to one or more of those entities, and if so, what would the mechanism for such non-market transactions (e.g. priority or emergency uses) be and who would develop and oversee it, (e) will there be any caps on prices to be paid for numbers, and if so how would they be developed, who would develop them, and who would administer them, (f) will numbers retain any location-based identity, or will location-association be eliminated as a feature of numbers, and numbers be bought and sold nationally without regard to local and state desires for location association, and if location association is to be retained, will the Commission establish as many submarkets for number exchange as necessary to keep numbers within the location for which the association is desired?

E. Further Answers to Specific Questions in May 1999 NPRM, FCC 99-122

In italics below, the NHPUC has paraphrased the requests for comment on the pricing issue, from the May 1999 NPRM, FCC 99-122, and follows each question with its further answers in response to the FNPRM issued March 21, 2000 in CC. Docket No. 99-200.

FCC 99-122, ¶ 229: Are there any public policy reasons not to establish a pricing mechanism for numbering resources?

Yes. Pricing mechanisms are not a panacea, and to be effective, would likely be as complicated and as difficult to implement and oversee as a direct regulatory allocation process. There can be unintentional or inevitable differences between the results desired and the results obtainable using a pricing tool rather than direct regulation. **However, the chief harm from instituting a pricing mechanism is that regulators will assume they can step back and “let the market work”, and that they will then do so, with the**

result that the public interest is not achieved. That is, if the reason to institute pricing is to relieve the Commission of the need for close supervision of the numbering system, and the mode of instituting pricing includes a decision by the Commission to step back from numbering system management, the result could well be worse than the present non-system.

FCC 99-122, ¶ 229: Should the FCC not establish a pricing mechanism for numbering resources for the reason that numbers are a public resource that cannot be owned, and a pricing mechanism would turn numbers into a private commodity?

The New Hampshire Commission agrees with California that the answer to this question is “no”. The rhetoric implicit in the “numbers-cannot-be-owned” criticism of a pricing mechanism is not in and of itself a good reason not to institute a pricing mechanism. However, behind the rhetoric are observations about the public-good characteristics of numbers and the public purpose uses of numbers that do counsel care in deciding whether to institute a pricing mechanism, as discussed elsewhere in these comments.

FCC 99-122, ¶ 229: Would a license-type agreement be consistent with the FCC’s long-held view that numbers are a public resource?

Yes.

FCC 99-122, ¶ 229: If the FCC were to permit a charge for numbering resources, should such a charge be monthly, annually, or multi-year?

If a given payment is the basis for the right to use specific numbers prospectively, the cost should be assessed monthly, if not weekly, unless a recall and repayment provision is developed. The regulator or its designee requires the maximum practical flexibility to recall numbers that are not being properly used. If the payment is for historic use of

numbers, or is based on usage over a representative period, and does not confer rights to specific numbers (e.g. a licensing arrangement), then a year is a suitable time period. Where a number is used by more than one carrier during a year (as when a customer switches carriers), the license fee for that number can be prorated among the various carriers who have used the number, or it can be applied to the carrier who used the number at a given point during the year.

FCC 99-122, ¶ 229: Would a two-tier pricing system be preferable, in which there is a flat charge and a variable charge for every NXX code? The intention of the flat charge would be to discourage carriers from requesting more numbers than they need, with the expectation that they can return excess numbers to the NANPA without incurring material costs.

A two-tiered pricing system would be preferable, but it does not solve all the problems for which the Commission has proposed a pricing system, and it creates others (as in differentiation between small carriers and large carriers, as noted by the Commission).

FCC 99-122, ¶ 230: Would requiring carrier to pay for numbers pose a particular challenge for new entrants that require numbering resources simply to establish a presence in a market, when compared to the societal costs imposed on carriers and subscribers in the current allocation system, including the potential impact on competitive entry in markets that are facing or will soon face numbering exhaust?

Almost by definition, requiring carriers to pay for numbers would pose a challenge for new entrants that require numbering resources to establish a presence in the market. This challenge may not be greater than that facing the incumbent⁶, if the incumbents are faced with the choice of paying for numbers they already are using or disgorging them (and forcing the customer to get another carrier), except to the extent that the incumbent has

⁶ Using incumbent to include not only ILECs, but incumbent CLECs and incumbent wireless carriers, and any other entity who controls numbering resources at the time of transition to a pricing mechanism.

numbers during a grace period for decision, whereas the new entrant has no numbers during the period of decision. If the only alternative under consideration by the Commission is the present system, in which no entity actively manages the scarce numbering resources to ensure fair allocation between incumbents and entrants, a pricing system would probably provide greater benefits to entrants. However, the present system is fundamentally flawed, in that it systematically encourages hoarding of numbers and thus favors incumbents, and is therefore an improper basis of comparison.

FCC 99-122, ¶ 230: Is it the case that even if some carriers will have more difficulty than others paying market price for numbers, this does not necessarily mean that the use of a pricing mechanism will be discriminatory or anti-competitive (so long as there are no distortions in the market, the pricing of numbering resources should be competitively neutral)?

No. However, it is necessary to define what is meant here by competitive neutrality, discrimination and anti-competitive effects, and depending on the definition, the answer could be “yes.” These terms (a) can be mutually exclusive and (b) contain value judgments that must be made explicit to be able to answer the question. The NPRM appears to focus on competitive neutrality, but even here, it is not clear what the Commission means by neutrality. A pricing system will favor one set of numbers users (or potential users) over another, by definition. The first distinction will be between those who have the funds to pay for numbers and those who do not. This is typically not considered to be an anti-competitive distinction to draw in a market economy. However, it is a form of discrimination, and more substantively, the results may not be desirable. For example, such an outcome may disproportionately affect certain types of carriers, who tend to have less money than others.⁷ If the Commission is seeking comment

⁷ Of course, if the pricing system allows incumbents to retain all numbers now assigned to them, without payment or without comparable payment to that required of new entrants, there will be an enormous discrimination made between existing carriers (and their technologies) and new carriers (and their technologies). Presumably the

specifically on whether certain types of carriers tend to have less money disposable for purchasing numbers, in general incumbent LECs and dominant interexchange carriers are likely to have sufficient access to capital, and a pricing mechanism will increase existing incentives to draw on captive customers for capital to fund new ventures. However, some entrants will also have access to capital through affiliates or venture capital. In either case, bigger firms will fare better than smaller firms, in general.

FCC 99-122, ¶ 230: Is it the case that even if some carriers will have more difficulty than others paying market price for numbers, this does not necessarily mean that the use of a pricing mechanism will be discriminatory or anti-competitive: pricing numbering resources may actually aid competitive entry by discouraging carriers from amassing excessively large inventories of numbers, thereby ensuring that an adequate supply of numbering resources is available to all service providers.

This question is perhaps at the core of the Commission's efforts regarding a new way to deal with our scarce numbering resources. The answer is "yes and no." It is true that if a firm must pay for something, it will have to take the cost into account when deciding whether to acquire that thing, and it will use what they have before acquiring something else, *except to the extent it has reason to keep acquiring more or to prevent competitors from acquiring that thing*. This exception is the key. Carriers will always have an anti-competitive reason to keep acquiring more numbers. Since numbers are a finite resource, the more numbers you have, the fewer your competitors can have. It is a zero-sum game. And since without numbers, the competitors cannot compete, hoarding numbers has a positive value.

Commission would not consider this discrimination to be competitively neutral, and would not allow it in any proposed pricing mechanism.

The question then becomes at what price for more numbers is a carrier's gain from keeping out competitors outweighed by the price that the carrier must pay for keeping an existing number or acquiring a new number, and how will that price be set to achieve the right decision on the part of carriers about using existing number resources or acquiring more resources? How can the FCC ensure that the price is set at a level that would direct the choice of the carrier to use existing numbers in lieu of acquiring additional numbers when to do so would be inefficient, wasteful, unfair or anti-competitive? If a price is high enough to force a carrier with numbers to use those numbers, is it necessarily too high to permit a carrier without numbers but with an active need for numbers to purchase them? If it is possible to set a price at a level that encourages number-holders to be efficient without discouraging new number-acquirers, someone must decide under what circumstances acquiring numbers would be inefficient, wasteful, unfair or anti-competitive. Someone must identify the circumstances that constitute inefficiency and waste, for example, and this in turn requires consideration of growth rates for carriers, reasonableness of forecasts, forecasts of competitors' needs, and the like.

FCC 99-122, ¶ 231: What are the possible components of a pricing mechanism for allocating numbers? Should the FCC adopt an administratively-determined pricing system, be based on a traditional cost-based pricing mechanism, where the "price" of numbering resources would be limited to levels necessary to recovery industry-related numbering costs? Should an administratively-determined cost be based on total societal costs? See also ¶¶ 232, 233.

The costs, as the Commission notes, can be segregated into administrative costs of the agency, administrative costs borne by the carriers, and externalities. Some of the carriers' costs would legitimately be required by a pricing scheme while others would

not. For example, if a pricing scheme is implemented, each carrier will need to conduct an inventory of its number holdings.⁸ Carriers will need to track very closely every number they hold, as well as numbers customers port away, a process that likely will require an upgrade of carrier systems.⁹ The FCC should not consider carriers' costs of maintaining and tracking a number inventory as costs associated with a pricing scheme – those are costs any company must incur to maintain and track inventory of any kind.

Basing the costs of obtaining numbers on the cost of industry-related numbering costs alone will understate the costs number-inefficiency and anti-competitive number usage imposes on society. It will also fail to bring forth the pro-efficiency and pro-competitive behaviors for which a pricing system would be proposed in the first place. The contribution towards exhaustion of the NANP itself is a cost that should be included, if pricing is to be used to internalize all costs and thereby attempt to forestall behavior considered costly to society. All costs should be internalized if a pricing system is the sole tool used for managing the resource, and the Commission wishes to see that the resource is used in a way that minimizes the total costs.

FCC 99-122, ¶¶ 231, 234: What are the possible components of a pricing mechanism for allocating numbers? For example, should the rate of increase in the supply of numbers be set based on achieving a prescribed life for each NPA, and the market then be permitted to determine the price for each NXX code?

The proposal to determine prices by setting a number-release rate and allowing the market participants to set prices based on demand for numbers released on such a

⁸ It is clear that this is a cost today under an administrative allocation of costs, but as a result of the FCC's new requirements for tracking and reporting of both forecast and historical number usage data, carriers should be well positioned to report an annual inventory of number holdings.

⁹ Again, this would be positive result, as New Hampshire believes that carriers should be tracking every number now, not just because the carrier would have to pay for the number.

timetable raises many issues. For example, how should the Commission determine the life to prescribe for the purpose of determining the rate at which unassigned numbers are released to the market? Would it be based on an assessment of the maximum demand for numbers relative to the number of numbers remaining in an NXX or NPA? If so, how would the maximum demand and the number of remaining numbers be determined? Who would determine the forecast of maximum demand, and what information would they use? If carrier forecasts of future demand would be used, how would gaming of forecasts be prevented, to ensure the end-date is not over- or under-stated? Would numbers presently assigned but not being used by carriers be included in the estimation of remaining numbers? If so, what of assigned numbers carriers claim they will use in some near-term future period? Can carriers claim them as “not-available?” How will it be determined if the claim of forecast need is accurate, and who will make the decision?

If the prescribed life for an NPA is not based on the maximum demand for numbers relative to some determination of numbers remaining, then what forecast demand is used? As with the development of estimates of maximum demand, in any alternative, who develops the prediction of demand, and on what basis?

If a firm buys a number during the period, whatever the basis for determining the period, what is the consequence of holding the number and failing to use it for provision of service? Is any withholding permissible, so long as the market price for acquiring and/or holding the number is met?

These questions are posed to demonstrate that whatever the merits of a price that is allowed to float within the constraint of an administratively-determined end date for the NPA or NXX, such a proposal does not obviate the need to engage in inherently uncertain forecasting and planning exercises, with all the due process and political pressures attendant upon such determinations.¹⁰

FCC 99-122, ¶ 234: What other market mechanisms could be used to reflect the full societal cost of numbering resources?

Given that the major costs in question here are externalities, and the number of numbers is finite, controlling access to the numbers is the only way to ensure that the externalities are reflected in pricing if prices are not administratively determined. Another way to control access is to establish a lottery (or other selection process) whereby only a certain number of carriers could obtain numbers during any period (and only in a given amount).

This approach would not solve the issues raised above relative to the controlled release method (as it necessarily includes controlled release as a component), and adds new problems of selection of eligible bidders.

FCC 99-122, ¶ 235: What types of procedures and safeguards would be necessary for a market mechanism to operate efficiently and in a non-discriminatory manner? For example, how would the FCC prevent the price of NXX codes from fluctuating wildly in the same market, or from rising to levels that might prevent competitive entry?

In microeconomic theory, price fluctuation is expected, and price fluctuation is expected to be dampened by the self-regulating action of market participants adding to offerings or withdrawing offerings from the market. There is a limit to the ability of suppliers to

¹⁰ Note also that the pricing scheme outlined by Martin L. Weitzman in the paper referenced in FCC 99-122 involved a resource that was not constrained in the same way as the numbers at issue here, that is, emissions reductions. While only a certain number of emissions reduction credits are available at any given time, any firm with emissions can reduce emissions without getting a credit.

increase supply or decrease supply, and thus to create a typical dampening effect on price fluctuations, because the numbering supply is finite, and is controlled either by an administrative agency or by competitors of those seeking numbers. No firm can manufacture new numbers and add them to the supply, perhaps taking advantage of price spikes but also causing the price spike to recede. The Commission could add more numbers to the supply in the event prices spiked, but such a response would undermine the goal of ensuring the maximum efficient life of the NXX and NPA. Carriers could sell their existing numbers (assuming a license approach was not taken), but the pressures to hoard would remain high. The same considerations apply to the problem of competitive entry. The Commission could set aside numbers for new entrants, outside the pricing system, but this of course would not be a market-based solution.

FCC 99-122, ¶ 235: Should a secondary market be permitted?

To the extent that secondary markets encourage speculation in the price of goods, they do not advance the Commission's goals. See also the July 31, 1999 comments of the California Public Utilities Commission in this docket, discussing both transfer of number rights, and consumer double-payment for numbers. As the California PUC commented, based on the FCC's suggestion that a "license-type arrangement" would be the mechanism through which carriers would obtain access to numbering resources, the NHPUC anticipates that the FCC considers numbers to be analogous to the electromagnetic spectrum. Several years ago, the FCC auctioned off licenses for Personal Communications Services (PCS). Each license authorized the licensee to use a defined portion of the electromagnetic spectrum to provide PCS to the licensee's

customers.¹¹ When a PCS licensee recruits a customer and provides service, the licensee continues to hold the spectrum used to provide the service. If the customer changes from one PCS telephone to another, the licensee still holds the spectrum. And, if the customer changes carriers, the carrier retains the right to use the spectrum, as the customer cannot take the spectrum used to provide PCS service from one carrier to another.

In contrast, once assigned a telephone number, a customer possesses the ability to take, or port, the number from one carrier to another within the customer's exchange.¹² This means that once a carrier obtains numbering resources, neither the carrier nor the FCC can assume that the carrier will retain control over those resources after specific numbers are assigned to end users. Thus, if a carrier is required to pay a license fee to use numbers, the carrier would be paying for the right to obtain and distribute the resource, but would not be guaranteed indefinite use of all numbers obtained.

It would not be impossible to design an appropriate pricing policy. But, as pointed out by the California PUC in its July 31, 1999 comments, the policy must reflect the fact that the resource can migrate from the licensee to another carrier. Moreover, the great expense incurred in the financing of LNP was incurred in order to give the end user a quasi-right to a telephone number. Thus, the selling of numbers could create a second right, by the

¹¹ Similarly, other portions the electromagnetic spectrum are licensed to broadcast licensees who use those portions for their respective radio and television stations.

¹² While this is not true for all wireline customers, or for wireless customers in the U.S. today, eventually we anticipate that all carriers will implement LNP.

carrier assigned the number initially, to the same item – the personal telephone number.¹³

Assuming these questions can be resolved, one potential pricing structure would be an annual license fee based on the quantity of numbers each carrier controls, whether in use, not in use, reserved, or otherwise assigned to the carrier.

FCC 99-122, ¶ 235: Should previously assigned numbers be priced, and if so, how?

Yes, previously assigned numbers would have to be priced to prevent the perpetuation of the anti-competitive impacts of the current system. But see the July 31, 1999 comments of the California Public Utilities Commission in this docket, discussing consumer double-payment for numbers inherent in any number pricing scheme.

FCC 99-122, ¶ 236: What geographic area should be defined for application of pricing?

As discussed in Section III, above, there are three steps that should be taken to separate uses that rely on locational identification from those that are indifferent to location. First, in either a market-based or administratively-based pricing situation, the Commission should establish at least one national NPA - SAC, for use by unified message services and similar services (other than resellers) who make use of intermediate numbers. Second, oddball NXXs should be also set aside within NPAs for similar in-state services that do not need or desire a locational identification, such as most wireless services. Third, states should be free to identify areas in the state where mandatory release of numbers will jeopardize the ability of localities to maintain NXX identification (e.g. areas where NXXs are nearing fill), and remove them from the mandatory single statewide market.

¹³ As a legal matter, it is not clear what rights the carrier, as assignee, and the end user, not a successor but also an assignee, would have to the same telephone number.

FCC 99-122, ¶ 237: What should be done with the revenues generated by this type of allocation system?

The revenues obtained by a pricing mechanism that covers societal costs will necessarily be large relative to the internalized costs of any numbering system. Fair revenue allocation in this situation will be exceedingly difficult to determine, and will be hotly contested.

Some observations can be made. Excess funds should not be used for rate center consolidation. To use them for rate center consolidation, especially if limited to reimbursing out-of-pocket transition costs, would constitute nearly-mandatory rate center consolidation, because state commissions would feel great pressure to take advantage of such funds. However, rate center consolidation shifts costs to customers with proportionately more local (or EAS) usage and away from customers with greater non-local usage. This may or may not be a desirable outcome, as arguments to state commissions in EAS public comment hearings make clear (some customers strenuously object to raising their flat rate bill so that others can have toll-free access to a wider area). One remedy for this shift would be to use some of the funds generated by a pricing mechanism to offset the increased local exchange costs created by rate center consolidation.

To use the funds for pooling is appropriate, although it does highlight the burden that a higher demand for numbers places on all in society. To the extent the higher demand is pushed by additional services that are not available to all customers (either because services are not rolled out in all areas equally at the same time, or because other barriers such as poor education or poverty prevent some customers from taking advantage of the

services), yet the cost of managing numbering resources rises and is passed on to all customers via the flow-through to rates of the cost of numbers, then the burden and the benefit are not well matched.

To better match the burden and benefit, the Commission could use the revenues to offset increases in subscriber line charges and other costs that disproportionately affect low-usage and low-tech-usage customers. If Congress requires all such funds to be put in the Treasury, the Commission loses the opportunity to match risk and reward, and should not pursue the pricing plan.

FCC 99-122, ¶ 238: What is a feasible time frame for implementing a pricing system, and what impact does that time frame have on other numbering optimization decisions in the interim?

The specific time frame chosen is not as important as what the Commission does in the meanwhile, to prevent hoarding. The longer the issue remains undecided or the plan calls for a phased implementation, the more unassigned number porting authority is needed by the states. UNP will be an effective tool to prevent hoarding.

The purpose of gradually phasing in a pricing regime is not made clear in the Commission's various NPRMs. If an auction is prescribed, there is no point in a cap¹⁴ or phase-in, because the auction will set the price (the Commission will set the quantity, and will need enough time to determine the price based on the considerations above). A cap could be a substitute for market power abuse prevention, and the need for a cap would suggest that the market is prone to abuse, however. If a license fee is used, the only point in a phase-in would be to prevent financial shock to the carriers (and their customers).

¹⁴ The Commission's concern about the impact of a cap and the potential need for rationing as an allocation device in an auction is not clear, since earlier in the NPRM the Commission suggested an auction whereby the number of numbers available would be limited by definition.

So long as the externality component of the receipts was used simultaneously to offset other charges that customers otherwise would pay, there will be no price shock, and no phase-in is required. Thus, in both auction and license fee scenarios, the time frame need only be dictated by the administrative lead time for developing the mechanism and preparing the billing and operational systems to implement it.

FCC 99-122, ¶ 240: What other numbering resource optimization measures would work in conjunction with a pricing mechanism, and would the economic incentives produced by a pricing mechanism be sufficient to encourage the industry to undertake these optimization measures on their own?

As noted above, unassigned number porting would work in conjunction with a pricing mechanism. As far as the impact of economic incentives, numbering prices would have to be high enough to overcome the incentive to hoard among those with the capital to corner the market, and such high prices might in turn might discourage those carriers who do not engage in hoarding from seeking numbers they would use in an efficient way.

F. Summary of Number-Pricing Observations

These comments argue that merely creating a market for numbers (allowing communications markets participants to own numbers and buy and sell them) will not result in an effective market demand for fairness in the allocation of the scarce numbering resource, nor will it produce the an effective market demand for efficient use of numbers posited by the NPRM. Thus, we argue that the Commission has essentially two choices, neither of which permits it to abandon the field of intensive oversight of the numbering resource. The Commission can continue to “micromanage” the allocation of resources directly, or it can “micromanage” the creation and implementation of market and pricing rules that, in turn, direct the allocation of scarce numbering resources. The worst of all possible outcomes would be the

institution of a pricing regime that does not contemplate such intensive development and oversight by the Commission, together with lax rules for numbering acquisition during the transition. This would not only not cure the problem the Commission faces, but have the perverse impact of making it worse.

The NHPUC also agrees with the California PUC that creating a national pricing scheme for telephone numbers, whether or not the FCC allows states to impose an additional price component,¹⁵ may create a complex system which could cost carriers, and ultimately the public, more than the public will benefit from the effort to achieve efficient number allocation.¹⁶ Admittedly, such a cost-benefit analysis is difficult to make, given that the costs to the public of implementing new area codes have not been quantified, though every state commission knows that the public is increasingly aware of these costs.¹⁷ The NHPUC urges the FCC to consider carefully whether the predictable costs associated with the anticipated efficiencies of charging carriers for numbers, on balance, will benefit the public. Only if the answer to that question is “yes” should the Commission proceed with a pricing scheme. In the meanwhile, the Commission should vigorously administer the number allocation system to maximize fairness, competitive neutrality, and efficient use of our scarce national number resource.

¹⁵ See the California PUC’s July 31, 1999 comments proposing a combined market-based and administratively-determined approach to number pricing.

¹⁶ Juan-Pablo Montero, of the Catholic University of Chile and Massachusetts Institute of Technology, adds to Martin L. Weitzman’s work, cited at Par. 366 of FC 99-122, n. 367, in a draft paper prepared for MIT, and demonstrates that if there is incomplete enforcement of prices as a tool of regulation, and benefit and cost curves are unknown, direct control of quantities will produce greater social welfare than pricing (or taxing) designs. Juan-Pablo Montero, *Pricing vs. Quantities with Incomplete Enforcement*,” draft July 7, 1999, available at <http://web.mit.edu/afs/athena.mit.edu/org/c/ceep/www/99009.pdf>.

¹⁷ Some of those costs cannot be quantified, as they involve intangibles such as inconvenience to customers and lost time trying having to re-dial telephone numbers when an area code change occurs. Still, these external costs clearly exist.

V. THE FCC SHOULD ENSURE THAT LNP-RELATED COSTS ARE NOT RECOVERED TWICE

The FCC requests additional cost information, including costs studies that quantify shared industry and direct carrier-specific costs of thousands-block number pooling. (¶ 253.) The NHPUC believes that carriers are much better positioned to provide the Commission with estimated costs of implementing thousands-block pooling. The NHPUC, however, urges the FCC to ensure that carriers cannot double recover LNP costs. To be more specific, the FCC has established a federal surcharge recovery mechanism for carriers to be reimbursed for costs associated with deploying LNP technology. Since LNP technology is what makes 1,000-block pooling possible, carriers should not be allowed to include LNP-related costs in their estimates of pooling costs.

VI. CONCLUSION

For the reasons stated, the NHPUC recommends that the FCC adopt a utilization threshold range of 70% to 80%. If the Commission is convinced that a uniform threshold is the preferred course, the NHPUC recommends a 75% threshold. New Hampshire opposes a ramp-up, and opposes a threshold as low as 50%.

Whatever the Commission chooses to do with respect to the development of a pricing mechanism, the NHPUC urges the Commission not to do so with the intention of withdrawing from the task of intensive oversight of the scarce numbering resource. If the Commission determines to proceed with a number pricing mechanism, the NHPUC urges the Commission immediately to permit states to institute mandatory unassigned number porting, and to begin intensive direct enforcement of pro-conservation code assignment guidelines and to delegate parallel authority to the states, to prevent the hoarding behavior that an announced future pricing

regime will likely produce pending the institution of such a regime. The NHPUC also urges the Commission, should it determine to institute a pricing regime, to develop specific goals for the end result (beyond merely the end date of usefulness of any NPA or NXX), detailed market rules and/or detailed administratively-set prices designed to call forth the desired behavior, and a plan for intensive enforcement of such rules and prices. Whatever path the Commission takes, the New Hampshire Public Utilities Commission stands ready to work with the Commission and its staff to ensure that numbers are not wasted, that consumers retain their locationally-based NPAs and NXXs and their 5- or 7-digit local dialing where desired and where possible, and that competitive neutrality and fairness are achieved.

The NHPUC also urges the FCC not to allow any additional time for wireless carriers to implement 1,000-block pooling after they have reached the deadline for deploying LNP technology. Covered CMRS providers have ample notice, even today, to be ready both to port and to pool.

Finally, the NHPUC recommends that the FCC explicitly prohibit carriers from double recovery of LNP costs in connection with recovering pooling costs.

Respectfully Submitted,
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